

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

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|-------------------------------------|---|---|
| Jimmy Duncan, |) | Civil Action No.: 8:07-3987-MBS-BHH |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>REPORT AND RECOMMENDATION</u> |
| |) | <u>OF MAGISTRATE JUDGE</u> |
| Mr. Powell; Stan Burt; Ms. Linda J. |) | |
| Dunlop; and John Ozmint, |) | |
| |) | |
| Defendants. |) | |

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On April 21, 2008, the defendants filed a motion for summary judgment. On April 22, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on June 3, 2008, giving the plaintiff through June 26, 2008, to file his response to the motion for summary judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The envelope containing this order was returned to the court as the plaintiff is apparently no longer at 113 Collins St, Walterboro, South Carolina, 29488.

The record reveals that the plaintiff was advised by order dated January 22, 2008, of his responsibility to notify the court *in writing* if his address changed.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in

Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4th Cir. 1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). Furthermore, it is also recommended that defendants' motion to strike Answer (Dkt # 14) and motion for summary judgment filed on February 25, 2008 (Dkt. # 15) be denied as moot.

s/Bruce Howe Hendricks
United States Magistrate Judge

June 17, 2008

Greenville, South Carolina